

## **REMARKS**

Claims 1-24 are pending in the Application, and all have been rejected in the Office action mailed August 21, 2007. Claim 12 is amended by this response. Claims 1, 12 and 21-24 are independent claims. Claims 2-11 and 13-20 depend, respectively, from independent claims 1 and 12.

As an initial matter, Applicant wishes to note that the Office action states, at page 2, that claim 1 was cancelled in the amendment dated May 23, 2007. Applicant respectfully submits that claim 1 was amended, not cancelled, in the amendment dated May 23, 2007.

The Applicant respectfully requests reconsideration of the pending claims 1-24, in light of the following remarks.

### **Rejection of Claims**

#### **Rejections Under 35 U.S.C. §102**

Claims 1-9, 12, and 19-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Gu et al. (U.S. 6,925,467, hereinafter "Gu"). The Applicant respectfully traverses the rejection. Notwithstanding, Applicant has amended claim 12 to clarify the subject matter of the claim.

With regard to the anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With respect to claim 1, Applicant respectfully submits that claim 1 recites "[a] method for updating software in an electronic device, the method comprising generating an update package for updating at least one software application, the update package being generated based upon at least one reference software installed on the electronic

device; updating the at least one software application using the update package and the reference software; and wherein the updating leaves the at least one reference software unchanged.” Applicant respectfully submits that Gu does not teach or suggest, at least, “...wherein the updating leaves the at least one reference software unchanged....”, as recited in Applicant’s claim 1.

The Office action alleges that Gu, at column 4, lines 5-17, discloses “updating the at least one software application using the update package and the reference software; and wherein the updating leaves the at least one reference software unchanged....” (Office action at page 3) Applicant respectfully disagrees.

According to Gu, at column 3, line 21 to column 4, line 17:

With reference to FIG. 1, a first computer system 102 and a second computer system 104 communicate via a communication path 106. These computer systems 102 and 104 include any collection of computing devices operating together, as is known in the art. The computer systems 102 and 104 also include components within a larger computer system. The communication path 106 includes any medium by which files are communicated or transferred between the computer systems 102 and 104. Therefore, this path 106 includes wireless connections, wired connections, and hybrid wireless/wired connections. The communication path 106 also includes couplings or connections to networks including local area networks (LANs), metropolitan area networks (MANs), wide area networks (WANs), proprietary networks, interoffice or backend networks, and the Internet. Furthermore, the communication path 106 includes removable fixed mediums like floppy disks, hard disk drives, and CD-ROM disks, as well as telephone lines, buses, and electronic mail messages.

The first communication system 102 receives an original, or old, version 110 and a new version 112 of an electronic file. The new file 112 is generally an updated or revised version of the original file 110, but is not so limited. The electronic files 110 and 112 include software files including dynamic link library files, shared object files, embedded software components (EBSCs), firmware files, executable files, data files including hex data files, system configuration files, and files including personal use data, but

are not so limited. Since any type of file can be regarded as a byte stream, hereafter a file can be described as a byte stream, depending the context.

The file differencing algorithm 114 receives the new file 112, compares it to the original file 110, and calculates the byte-level differences between the compared files, as described below. The file differencing algorithm 114 may also pre-process the original 110 and the new 112 files to reduce the sizes of the files prior to the calculation of the file differences. The file differencing algorithm 114 generates a difference file 116, referred to herein as a delta file, during the comparison.

Contents of the delta file 116 provide an efficient representation of the byte-level differences between the new and the original files. The delta file 116 includes meta-data along with actual data of replacement and/or insertion operations that represents the differences between the new or current version of the associated file and previous versions of the file, as described below. The file differencing algorithm 114 provides any differences between the original 110 and the new 112 files in the delta file 116 using a minimum number of bytes and a pre-defined format or protocol described below, thereby providing a delta file optimized in space.

The delta file 116 is transferred or transmitted to another computer system via the communication path 106. Prior to transfer, the delta file 116 may be compressed using compression techniques known in the art, but is not so limited. The file updating algorithm 118 hosted on the receiving computer system uses the delta file 116 along with the hosted original file 110 to generate or create a copy of the new file 112. This copy of the new file 112 is then used to update the original file 110 hosted on the client device that is targeted for revision or updating. Upon completion of this update process, the new file now stored on the second computer system is identical to the new file received in the first computer system.

(underline added)

Applicant respectfully submits that neither the portion of Gu shown above, which includes that portion of Gu specifically cited in the Office action as teaching “updating the at least one software application using the update package and the reference software; and wherein the updating leaves the at least one reference software unchanged...”, nor any other portion or figure of Gu teaches or suggests “...wherein the updating leaves the at least one reference software unchanged...”, as recited in Applicant’s claim 1.

Applicant respectfully submits that the instant Office action identifies the “delta file 116” of Gu as corresponding to the “update package” of Applicant’s claim 1, and the “hosted original file” of Gu as corresponding to the “at least one reference software” of Applicant’s claim 1. (Office action at page 3, lines 9-11 and lines 11-14, respectively)

Applicant respectfully submits that the underlined portion of Gu shown above, which was specifically cited by the Office action, clearly states that “...[t]he file updating algorithm 118 hosted on the receiving computer system uses the delta file 116 along with the hosted original file 110 to generate or create a copy of the new file 112. This copy of the new file 112 is then used to update the original file 110 hosted on the client device that is targeted for revision or updating.” (underline added) Therefore, Applicant respectfully submits that Gu teaches that the “hosted original file 110”, which the Office identified as teaching Applicant’s “at least one reference software” is, in fact, updated to be the same as the “new file 112” of Gu, and that Gu does not teach or suggest Applicant’s feature “...wherein the updating leaves the at least one reference software unchanged...”, as recited in claim 1. Therefore, Applicant respectfully submits that Gu fails to teach or suggest at least this aspect of Applicant’s claim 1.

Based at least upon the above, the Applicant respectfully submits that Gu fails to teach each and every element of Applicant’s claim 1, as required by MPEP §2131, that Gu fails to anticipate Applicant’s claim 1, and that the rejection of claim 1 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, Applicant believes that claim 1 is allowable over Gu, for at least the reasons set forth above. Applicant respectfully submits that claims 2-11 depend either directly or indirectly from allowable claim 1. Because claims 2-11 depend from claim 1,

Applicant respectfully submits that claims 2-11 are allowable as well, for at least the same reasons. Therefore, Applicant respectfully requests that the rejection of claims 1-9 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to amended claim 12, Applicant respectfully submits that claim 12 as amended recites “[a] system for updating software, the system comprising: an electronic device capable of having software installed thereon; a software delivery device for receiving and installing a reference software to the electronic device if the electronic device does not have the reference software previously installed; and the software delivery device receiving and delivering at least one update package to the electronic device, wherein the reference software facilitates, using the at least one update package, at least one update to application software installed on the electronic device, and wherein the updating leaves the reference software unchanged.”

The Office action alleges that Gu discloses, at column 1, lines 33-37, “...a software delivery device for receiving and installing a reference software to the electronic device if the electronic device does not have the reference software previously installed....” (Office action at page 4, lines 6-8) Applicant respectfully disagrees.

According to Gu, at column 1, lines 33-39, states:

In contrast, in mobile wireless devices, a real-time operating system (RTOS) is typically used in which all software components are linked as a single large file. Further, no file system support is typically provided in these mobile wireless devices. In addition, the single large file needs to be preloaded, or embedded, into the device using a slow communication link like a radio, infrared, or serial link.

Applicant respectfully submits that neither the portion of Gu shown above, which was specifically cited by the Office action, nor any other text or figure of Gu, teaches or suggests “...a software delivery device for receiving and installing a reference software to the electronic device if the electronic device does not have the reference software previously installed....” More specifically, Gu makes no mention of any action that

determines "...if the electronic device does not have the reference software previously installed...", and certainly does not teach or suggest "...a software delivery device for receiving and installing a reference software to the electronic device...", that makes such a determination. Applicant respectfully submits that, with respect to the rejection of claim 12, the instant Office action fails to specifically identify the teaching of Gu that corresponds to Applicant's elements "software delivery device" and "reference software", as recited in claim 12. Applicant assumes that the "hosted original file 110" identified in the rejection of claim 1 as corresponding to Applicant's "at least one reference software", is also suggested as the teaching of Gu that corresponds to the "reference software" in the rejection of claim 12. The Office has failed, however, to identify that teaching of Gu that corresponds to the "software delivery device" of Applicant's claim 12. Applicant's assumes that the "first computer system 102" of Gu is intended to represent Applicant's feature "software delivery device" of claim 12. If Applicant's assumptions are in error, Applicant respectfully requests that the Office specifically identify the correct corresponding teachings of Gu in a subsequent non-final Office action, should the Office choose to maintain the rejection.

Applicant respectfully submits that Gu fails to set forth any teaching or suggestion that the "first computer system 102" of Gu receives and installs the "hosted original file 110" to an electronic device if the electronic device does not have the "hosted original file 110" previously installed, in accordance with Applicant's claim 12. Applicant respectfully submits that in order for the "first computer system 102" to receive and install the "hosted original file 110" to an electronic device if the electronic device does not have the "hosted original file 110" previously installed, the "first computer system 102" must make a determination of whether the "hosted original file 110" has been previously installed. Applicant respectfully submits that Gu fails to set forth such a teaching. Therefore, Applicant respectfully submits that Gu fails to teach or suggest at least this aspect of Applicant's amended claim 12.

To further clarify the subject matter of claim 12, Applicant has amended claim 12 to include the text "...and wherein the updating leaves the reference software unchanged..." Applicant respectfully submits that the added text is similar to text found

in Applicant's claim 1, and that Gu fails to teach or suggest "...and wherein the updating leaves the reference software unchanged...", for at least the reasons set forth above with respect to claim 1. Therefore, Applicant respectfully submits that Gu fails to teach or suggest at least this aspect of Applicant's amended claim 12.

Based at least upon the above, the Applicant respectfully submits that Gu fails to teach each and every element of Applicant's amended claim 12, as required by MPEP §2131, that Gu fails to anticipate Applicant's claim 12, and that the rejection of claim 12 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, Applicant believes that amended claim 12 is allowable over Gu, for at least the reasons set forth above. Applicant respectfully submits that claims 13-20 depend either directly or indirectly from allowable claim 12. Because claims 13-20 depend from claim 12, Applicant respectfully submits that claims 13-20 are allowable as well, for at least the same reasons. Therefore, Applicant respectfully requests that the rejection of claims 12, 19, and 20 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to claims 21 and 22, Applicant respectfully submits that claims 21 and 22 recite, in part, "...generating a third update package for updating the at least one software application, the third update package being generated based upon difference information between the first and second update packages; and updating the at least one software application using the third update package."

Applicant respectfully submits that Gu fails to teach or suggest, at least, "...generating a third update package for updating the at least one software application, the third update package being generated based upon difference information between the first and second update packages...", and "...updating the at least one software application using the third update package...", as recited in Applicant's claims 21 and 22. In rejecting this aspect of Applicant's claims 21 and 22, the Office action relies on Gu at column 3, lines 40-51, which states:

The first communication system 102 receives an original, or old, version 110 and a new version 112 of an electronic file. The new file 112 is generally an updated or

revised version of the original file 110, but is not so limited. The electronic files 110 and 112 include software files including dynamic link library files, shared object files, embedded software components (EBSCs), firmware files, executable files, data files including hex data files, system configuration files, and files including personal use data, but are not so limited. Since any type of file can be regarded as a byte stream, hereafter a file can be described as a byte stream, depending the context.

Applicant respectfully submits that neither the portion of Gu shown above, which was specifically cited by the Office, nor any other portion or figure of Gu teaches or suggests, at least, "...generating a third update package for updating the at least one software application, the third update package being generated based upon difference information between the first and second update packages...", and "...updating the at least one software application using the third update package...", as recited in Applicant's claims 21 and 22. Instead, the cited portion of Gu shown above simply teaches that the electronic files 110 and 112 may be of any of a number of types of files. Applicant respectfully notes the teachings of Gu apply to "...an original, or old, version 110 and a new version 112 of an electronic file." That is, the old version 110 and new version 112 are different versions of the same type of electronic file.

Applicant respectfully submits that Gu teaches, at column 3, line 21 to column 4, line 17, which states:

With reference to FIG. 1, a first computer system 102 and a second computer system 104 communicate via a communication path 106. These computer systems 102 and 104 include any collection of computing devices operating together, as is known in the art. The computer systems 102 and 104 also include components within a larger computer system. The communication path 106 includes any medium by which files are communicated or transferred between the computer systems 102 and 104. Therefore, this path 106 includes wireless connections, wired connections, and hybrid wireless/wired connections. The communication path 106 also includes couplings or connections to networks including local area networks (LANs), metropolitan area networks



(MANs), wide area networks (WANs), proprietary networks, interoffice or backend networks, and the Internet. Furthermore, the communication path 106 includes removable fixed mediums like floppy disks, hard disk drives, and CD-ROM disks, as well as telephone lines, buses, and electronic mail messages.

The first communication system 102 receives an original, or old, version 110 and a new version 112 of an electronic file. The new file 112 is generally an updated or revised version of the original file 110, but is not so limited. The electronic files 110 and 112 include software files including dynamic link library files, shared object files, embedded software components (EBSCs), firmware files, executable files, data files including hex data files, system configuration files, and files including personal use data, but are not so limited. Since any type of file can be regarded as a byte stream, hereafter a file can be described as a byte stream, depending the context.

The file differencing algorithm 114 receives the new file 112, compares it to the original file 110, and calculates the byte-level differences between the compared files, as described below. The file differencing algorithm 114 may also pre-process the original 110 and the new 112 files to reduce the sizes of the files prior to the calculation of the file differences. The file differencing algorithm 114 generates a difference file 116, referred to herein as a delta file, during the comparison.

Contents of the delta file 116 provide an efficient representation of the byte-level differences between the new and the original files. The delta file 116 includes meta-data along with actual data of replacement and/or insertion operations that represents the differences between the new or current version of the associated file and previous versions of the file, as described below. The file differencing algorithm 114 provides any differences between the original 110 and the new 112 files in the delta file 116 using a minimum number of bytes and a pre-defined format or protocol described below, thereby providing a delta file optimized in space.

The delta file 116 is transferred or transmitted to another computer system via the communication path 106.

Prior to transfer, the delta file 116 may be compressed using compression techniques known in the art, but is not so limited. The file updating algorithm 118 hosted on the receiving computer system uses the delta file 116 along with the hosted original file 110 to generate or create a copy of the new file 112. This copy of the new file 112 is then used to update the original file 110 hosted on the client device that is targeted for revision or updating. Upon completion of this update process, the new file now stored on the second computer system is identical to the new file received in the first computer system.

Applicant respectfully submits that the teachings of Gu shown above simply state that Gu compares an “original file” and a “new file”, generates a “delta file” based upon the comparison, sends the “delta file” to a receiving computer, and uses the “delta file” and the “original file” hosted on the receiving computer, to generate/create the “new file” at the receiving computer. Applicant respectfully submits Gu teaches that the “new file” is simply a different version of the same type of file as the “original file”. Applicant respectfully submits that the Office action clearly suggests correspondence between the “delta file” of Gu, and Applicant’s “update package”. (Office action at page 6, lines 15-16)

In contrast to Gu, Applicant’s claims 21 and 22 recite, in part, “...generating a third update package for updating the at least one software application, the third update package being generated based upon difference information between the first and second update packages...”, and “...updating the at least one software application using the third update package....” Applicant respectfully submits that Gu fails to teach or suggest using a “delta file” [generated by comparing first and second “delta files”] to update a file that is a software application [a type of file other than a “delta file”], in accordance with Applicant’s claims 21 and 22. Applicant respectfully submits that instead, Gu teaches updating a first version of a type of file, using a “delta file” generated using the first version and a second version of the same type of file. Therefore, Applicant respectfully submits that the teachings of Gu are different from and fail anticipate “...generating a third update package for updating the at least one software application, the third update package being generated based upon difference

information between the first and second update packages...”, and “...updating the at least one software application using the third update package...”, as recited in Applicant’s claims 21 and 22.

Based at least upon the above, the Applicant respectfully submits that Gu fails to teach each and every element of Applicant’s claims 21 and 22, as required by MPEP §2131, that Gu fails to anticipate Applicant’s claims 21 and 22, and that the rejection of claims 21 and 22 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, Applicant believes that claims 21 and 22 are allowable over Gu, for at least the reasons set forth above, and respectfully requests that the rejection of claims 21 and 22 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to Applicant’s claims 23 and 24, Applicant respectfully submits that claims 23 and 24 recite, in part, “...a second update package generator for generating update packages based upon difference information between different update packages; and a software delivery device for delivering at least one update package generated based upon difference information between different update packages to the electronic device.” Applicant respectfully submits that Gu fails to teach or suggest, at least, “...a second update package generator for generating update packages based upon difference information between different update packages...”, and “...a software delivery device for delivering at least one update package generated based upon difference information between different update packages to the electronic device...”, as recited by Applicant’s claims 23 and 24, for at least the reasons set forth above with respect to claims 21 and 22. Applicant respectfully submits that Gu fails to teach at least these aspects of Applicant’s claims 23 and 24. Therefore, based at least upon the above, the Applicant respectfully submits that Gu fails to teach each and every element of Applicant’s claims 23 and 24, as required by MPEP §2131, that Gu fails to anticipate Applicant’s claims 23 and 24. Therefore, Applicant believes that claims 23 and 24 are allowable over Gu, for at least the reasons set forth above, and respectfully requests that the rejection of claims 23 and 24 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

### **Rejections Under 35 U.S.C. §103**

Claims 10, 11, and 14-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gu in view of Liu et al. (US 7,143, 405, hereinafter "Liu"). The Applicant respectfully traverses the rejection.

The Applicant respectfully submits that the Examiner has failed to establish a case of prima facie obviousness for at least the reasons provided below. M.P.E.P. §2142 clearly states that "[t]he examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness." The M.P.E.P. §2142 goes on to state that "[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

Applicant respectfully submits that claims 10 and 11, and claims 14-18 depend, either directly or indirectly, from independent claims 1 and 12, respectively. Applicant believes that claims 1 and 12 are allowable over the proposed combination of references, in that Liu fails to overcome the shortcomings of Gu, as set forth above. Because claims 10 and 11, and claims 14-18 depend, respectively, from allowable claims 1 and 12, Applicant respectfully submits that claims 10, 11, and 14-18 are also allowable, for at least the same reasons. Applicant respectfully requests, therefore, that the rejection of claims 10, 11, and 14-18 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gu in view of Meyerson (US 6,976,251). The Applicant respectfully traverses the rejection. Applicant respectfully submits that claim 13 depends from independent claim 12. Applicant believes that claim 12 is allowable over the proposed combination of references, in that Meyerson fails to overcome the shortcomings of Gu, as set forth above. Because claim 13 depends from allowable claim 12, Applicant respectfully submits that claim 13 is

also allowable, for at least the same reasons. Applicant respectfully requests, therefore, that the rejection of claim 13 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

### **Conclusion**

In general, the Office Action makes various statements regarding claims 1-24 and the cited references that are now moot in light of the above. Thus, Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicant believes that all of pending claims 1-24 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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/Kevin E. Borg/  
Kevin E. Borg  
Reg. No. 51,486

Hewlett-Packard Company  
Intellectual Property Administration  
Legal Department, M/S 35  
P.O. Box 272400  
Fort Collins, CO 80527-2400